IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9736 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

AADODIYA NIRUBEN ASHOKBHAI

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL for Petitioner

Mr. A.J. Desai, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 29/02/2000

ORAL JUDGEMENT

Heard learned Advocate Mrs. S.G. Patel for petitioner and learned A.G.P. Mr. A.J. Desai, on behalf of the respondents nos.1, 2 and 3.

1. The detention order dated 5-8-1999 passed by the District Magistrate, Bhavnagar (the respondent no.2) against the petitioner-detenu in exercise of powers conferred under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985("PASA" for short) is challenged in the present petition filed under Article 226 of the Constitution of India.

2. The grounds of detention served and supplied to the petitioner -detenu under Sec.9(1) of "PASA" , copy of which is produced at running page 12 to 14 inter alia indicate that nine criminal cases for the offences made punishable under the Bombay Prohibition Act are filed against the petitioner at Bhavnagar B Division Police Station between the period from 8-8-1998 to 8-7-1999. That in each case countrymade liquor has been seized from the possession of the petitioner. That out of the said 9 cases, six cases are pending for trial in Court while the remaining three cases are pending for investigation.

2.1 The grounds of detention further indicate that four witnesses on assurance of anonymity have given statements regarding bootlegging activities of the petitioner without specifying the date of alleged incident.

3. That in consideration of the aforesaid material, the respondent no.2 as detaining authority has come to the conclusion that the petitioner is a "bootlegger" within the meaning of Section 2(b) of " PASA". That resort to general provisions of law being insufficient to prevent the petitioner from continuing his antisocial activity and as such, the impugned order is passed.

4. The petitioner has challenged the impugned order on numerous grounds. It has been contended on behalf of the petitioner at the Bar that the impugned order suffers from the vice of non application of mind inasmuch as the before passing the impugned order the detaining authority has failed to consider the aspect of claiming cancellation of bail granted to the petitioner in a pending case against him as available under Sec.437(5) of the Cr.P.C.

5. That in the matter of ZUBEDABIBI RASIDKHAN PATHAN VS. STATE OF GUJARAT AND ORS. (1995 (2) G.L.H. 1134), the Division Bench of this Court has expressed the view that non consideration of less drastic remedy like cancellation of bail under Section 437(5), Cr.P.C. amounts to non application of mind vitiating the detention order. That the said view has been approved

and endorsed in the proceedings of Letters Patent Appeal no.1056/99 decided on 15-9-1999 by this Court (Coram:C.K.Thakkar & A.L.Dave,JJ.).

6. On scrutiny of papers, it appears that the respondent no.2 as detaining authority has nowhere considered the status of the petitioner as to whether the petitioner was in judicial custody, police custody or on bail. In view of the same, it is difficult to sustain the order, particularly, when no affidavit on behalf of the respondent has been filed despite due service of rule.

7. As the petition succeeds on the aforesaid grounds, it is not necessary to consider and decide the other contentions raised in the petition.

8. On the basis of the aforesaid discussion, the petition is allowed. The impugned order of detention dated 5-8-1999 passed by the District Magistrate, Bhavnagar, (respondent no.2) is hereby quashed and set aside. The petitioner-detenu-Aadodiya Niruben Ashokbhai is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly.

****

stanley-akt